IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.1440 of 2007

Shri Hemantkumar Surendrakumar Jain Petitioner

Vs.

The State of Maharashtra Respondent

Mr.S.P.Kadam for petitioner.

Mr.S.R.Shinde, APP for State.

CORAM: B.H.MARLAPALLE, J.

August 21, 2007.

P.C.

. Heard Mr.Kadam, the learned counsel for the petitioner who has filed CC No.67/Misc./2001 for the offences punishable under Sections 379, 420, 467, 468 and 471 of IPC against the respondent no.2. The learned Metropolitan Magistrate at the first instance had ordered an enquiry under Section 156(3) of Cr.P.C. and on completion of the investigation the Senior Inspector of Police, Dr.D. B. Marg Police Station submitted his report dated 14/11/2002. The subject matter of the petitioner's complaint was the theft of cheque bearing no.037378 from the Current Account No.210320741. It was alleged that the said cheque was blank and was signed by the complainant

and it was stolen or by any other illegal means taken possession by the respondent no.2 - accused. The police on enquiry in their report stated that the said cheque was drawn in favour of the respondent no.2 and it was subsequently dishonoured and the respondent no.2 filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 after issuing the statutory notice and the said complaint came to be registered as CC No.250/SS/2001. The notice issued against the present petitioner who is impleaded as the accused in the said case was received by him and he appeared in the said case on 25/4/2001. The case has been subsequently transferred to the Court of the learned Metropolitan Magistrate, 40th Court and re-registered as CC No.359/S/2002. The next date was given as 17/1/2003 and the petitioner lodged the complaint against the respondent no.2 on 18/5/2001.

. This report submitted by the Senior P.I. has been accepted by the trial Court and the learned Metropolitan Magistrate by his order dated 17/10/2005 held that the petitioner had filed the complaint with an intention to give a set back to the proceedings filed under Section 138 of the Negotiable Instruments

Act. The petitioner, therefore, had approached the Sessions Court in Criminal Revision Application No.1565 of 2005 and the same has been dismissed.

Hence this petition.

. There is no dispute that the alleged stolen cheque or misplaced cheque or forged cheque is the subject matter of the complaint filed by the respondent no.2 for its dishonour under Section 138 of the Negotiable Instruments Act and whether the cheque was issued in due course against a debt or any other legally enforceable liability will be examined in the said complaint where the petitioner is impleaded as an accused. The complaint of the petitioner is initiated after he had received the notice in the said complaint filed by the present respondent no.2. As of now the view taken by the learned Metropolitan Magistrate for accepting the report submitted under Section 156(3) of Cr.P.C. cannot be held to be perverse or grossly erroneous so as to cause interference in this petition under Article 227 of the Constitution and, therefore, this petition fails at the threshold. The same is hereby rejected.

. By way of clarification it is stated that rejection of the petition will not come in the way of the petitioner to defend the case of dishonour of cheque initiated against him.

(B.H.MARL